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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DARTANYAN JUEL TURNER,

Defendant.

CR-08-150-WFN  
CR-08-173-RHW-007

United States' Sentencing  
Memorandum

Plaintiff, United States of America, by and through James A. McDevitt,  
United States Attorney for the Eastern District of Washington, and Joseph H.  
Harrington, Assistant United States Attorney for the Eastern District of  
Washington, submits the following sentencing memorandum.

**Introduction**

It appears the Presentence Investigation Report ("PSR"), along with the  
accompanying Addendum dated September 10, 2009, are complete and accurate.  
Although the Defendant questioned whether his Guidelines computation should  
include a 4- level increase based on his possession of a firearm/ ammunition in  
connection with another felony offense (*see* PSR ¶ 149), he notably failed to  
mention that he agreed this increase properly applies when he entered the Plea

1 Agreement in cause no. CR-08-150-WFN. *See* Plea Agreement ¶ 10(b) (“United  
2 States and [the Defendant] further agree \* \* \*”).<sup>1</sup>

3 The United States respectfully submits that, at a minimum, a 120-month  
4 term of incarceration, followed by a three-year term of supervised release, would  
5 be a “reasonable” sentence under the facts and circumstances of these cases and  
6 would not be greater than necessary to promote the purpose and policy of the  
7 Federal Sentencing Act, 18 U.S.C. § 3553(a).

### 8 Legal Overview

9 In accordance with the Supreme Court’s decision in *United States v.*  
10 *Booker*, 543 U.S. 220, 125 S.Ct. 738 (2005), sentencing courts must engage in a  
11 two-step process when imposing a sentence. The first step requires a court to  
12 calculate properly the advisory Guidelines sentencing range. *See United States v.*  
13 *Cantrell*, 433 F.3d 1269, 1279-80 (9<sup>th</sup> Cir. 2006). A sentencing court should use  
14 this range as a starting point for its assessment of an appropriate sentence. *Id.*  
15 The second step requires a sentencing court to impose a “reasonable” sentence in  
16 light of all the factors under 18 U.S.C. § 3553(a). *See United States v. Marcial-*  
17 *Santiago*, 447 F.3d 715, 717 (9<sup>th</sup> Cir. 2006).<sup>2</sup> A wide range of sentences may be  
18 deemed reasonable. *See United States v. Mohamed*, 459 F.3d 979, 989 (9<sup>th</sup> Cir.

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21  
22 <sup>1</sup> The Defendant also raises objections to his Criminal History  
23 computation, which objections are plainly academic (having no ultimate impact on  
24 his criminal history category) or are properly included in the computation, as note  
25 by the Addendum.

26 <sup>2</sup> *Cf. U. S. v. Zolp*, 479 F.3d 715, 722 (9<sup>th</sup> Cir. 2007)(the scheme of  
27 downward and upward departures is treated as essentially replaced by the  
28 requirement that judges impose a “reasonable” sentence).

2006) (“reasonableness is a range, not a point.” (quoting *United States v. Cunningham*, 429 F.3d 673, 679 (7<sup>th</sup> Cir. 2005)).<sup>3</sup>

### A. Step One: Guidelines Calculation

The PSR appears to have correctly calculated the advisory Guidelines. With respect to the firearms-related offenses, the Defendant’s base offense level is 20. See PSR ¶ 146; Plea Agreement ¶ 10(a) (“United States and [the Defendant] agree”). The base offense level should be increased by 2 levels because the offenses involved at least three firearms. See PSR ¶ 147; Plea Agreement ¶ 10(b) (“United States and [the Defendant] agree”). The base offense level should be increased an additional 4 levels because one of the firearms had an obliterated serial number. See PSR ¶ 148; Plea Agreement ¶ 10(b) (“United States and [the Defendant] also agree”). Finally, the base offense level should be increased an additional 4 levels because the Defendant possessed any firearm or ammunition in connection with another felony offense. See PSR ¶ 149; Plea Agreement ¶ 10(b) (“United States and [the Defendant] further agree”). Hence, the Defendant’s adjusted offense level is 30. See PSR ¶ 153.<sup>4</sup>

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<sup>3</sup> On review, a sentence is subject to a three-part standard. A sentencing court’s application of the Guidelines to the facts of a case is reviewed for abuse of discretion and a court’s factual findings are reviewed for clear error. See *United States v. Cantrell*, 433 F.3d at 1279-80. Courts of appeals apply a presumption of reasonableness to a sentence that reflects a proper application of the Guidelines and that falls within the advisory sentencing range. See *Rita v. United States*, 551 U.S. 338, 127 S.Ct. 2456, 2462 (2007).

<sup>4</sup> As noted in the PSR, the counterfeiting offenses add no incremental increase in the Defendant’s total offense level under a grouping analysis. See PSR ¶¶ 154-62.

1 After a 3 level reduction for the Defendant's timely acceptance of  
 2 responsibility (*see* PSR ¶¶ 163-64), his total offense level is 27. With a Criminal  
 3 History category V (*see* PSR ¶¶ 203-31),<sup>5</sup> the Defendant's advisory Guidelines  
 4 sentencing range is 120-150 months.

5 Pursuant to the Plea Agreement, "[the Defendant] and the United States  
 6 acknowledge that they are free to make whatever sentencing recommendations  
 7 they deem are appropriate **within** the applicable Guidelines sentencing range."  
 8 Plea Agreement, ¶ 11 (emphasis added). Here, the statutory maximum penalty for  
 9 the firearms-related counts of convictions is 120 months.

#### 10 1. Effect of Grouping

11 As noted above, the counts of conviction relating to the counterfeiting  
 12 offenses have no effect on the Defendant's total offense level under a grouping  
 13 analysis. *See* PSR ¶¶ 154-62. The Guidelines provide that where, as in the  
 14 instant case,

15 there are several groups and the most serious offense is considerably more  
 16 serious than all of the others, there will be no increase in the offense level  
 17 resulting from the additional counts. Ordinarily, the court will have latitude  
 to impose added punishment by sentencing toward the upper end of the  
 range authorized for the most serious offense.

18 USSG § 3D1.4, comment. (backg'd.). However, other than the absolute low end,  
 19 the 120-150 month sentencing range exceeds the statutory maximum penalty for  
 20 each of the firearms-related counts of conviction – the most serious offenses.

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 24 <sup>5</sup> The Defendant's only serious contention regarding his Criminal  
 25 History computation relates to a 2006 Assault conviction for which he received a  
 26 365 day suspended sentence, subject to a 24 month term of probation. PSR ¶ 222.  
 27 This conviction is properly assessed one Criminal History point. *See* USSG §  
 28 4A1.1(c).

1                   2.     Consecutive v. Concurrent Sentence

2             By way of the Plea Agreement in cause number CR-08-150-WFN, the  
3 parties acknowledged that, “while the Court has the authority to impose  
4 consecutive sentences for each conviction, the advisory Guidelines provide that  
5 the sentence imposed for multiple convictions ‘shall be the total punishment as  
6 determined in accordance with [the combined offense level computation].’ *See*  
7 USSG § 5G1.2(b).” Plea Agreement, ¶ 10(e.). In this vein, the parties also  
8 acknowledged that the firearms-related counts of conviction “carry no statutory  
9 requirement that any term of imprisonment imposed on each Count be run  
10 consecutively.” Plea Agreement, ¶ 10(e.).

11             The Guidelines provide that if the sentence imposed on the count carrying  
12 the highest statutory maximum penalty – in this case 120 months – is less than the  
13 total punishment, “then the sentence imposed on one or more of the other counts  
14 shall run consecutively, but only to the extent necessary to produce a combined  
15 sentence equal to the total punishment.” USSG § 5G1.2(d).

16             Recognizing that the imposition of any partially consecutive sentence is a  
17 discretionary determination by the Court, the United States and the Defendant  
18 agreed “to recommend that the Defendant serve his sentence in [cause number 09-  
19 CR-0173-RHW-7] **concurrent** to any sentence imposed under cause no. CR-08-  
20 150-WFN.” Plea Agreement, ¶ 7(b.) (cause number 09-CR-0173-RHW-7).

21             **B.     Step Two: Consideration of the Factors under 18 U.S.C. § 3553**

22             To comply with the requirements of *Booker*, a sentencing court must not  
23 only considered the Guidelines, but must consider the factors identified in 18  
24 U.S.C. § 3553(a). “This requirement does not necessitate a specific articulation of  
25 each factor separately, but rather a showing that the district court considered the  
26 statutorily-designated factors in imposing a sentence .” *See United States v.*  
27  
28

1 *Knows His Gun*, 438 F.3d 913, 918 (9th Cir.2006).<sup>6</sup> The factors a sentencing must  
 2 consider are the nature and circumstances of the offense and the history and  
 3 characteristics of the defendant. The sentencing court must also consider the need  
 4 for the sentence imposed to: reflect the seriousness of the offense; promote respect  
 5 for the law; provide just punishment; afford adequate deterrence to criminal  
 6 conduct; protect the public from further crimes of the defendant; provide the  
 7 defendant with needed educational training, medical care, or other correctional  
 8 treatment. A sentencing court must also consider “the need to avoid unwarranted  
 9 sentencing disparities among defendants with similar records who have been  
 10 found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6).

11 1. Nature and circumstances of the offenses

12 The nature and circumstances of the firearms-related offenses are serious.  
 13 The Defendant had numerous firearms in his possession, along with significant  
 14 quantities of controlled substances. The number, type, obliterated serial number,  
 15 and circumstances under which the Defendant possessed the firearms weigh in  
 16 favor of a lengthy sentence. Moreover, the Defendant was involved in a fairly  
 17 sophisticated counterfeiting scheme for which he should be held accountable.

18 2. History and characteristics of the defendant

19 The Defendant’s history and characteristics are vexing. He has a long-term  
 20 criminal history, much of which is not factored into his Criminal History  
 21 computation. He began his string of criminal behavior at age ten in 1991. His  
 22 adult criminal convictions included violent crime (First Degree Robbery, PSR ¶  
 23 203 and Assault, PSR ¶ 222) as well as drug-related crimes (Possession of  
 24 Marijuana, PSR ¶ 206 and Possession of Cocaine, PSR ¶ 215). He has limited  
 25 formal education, receiving a GED while incarcerated ( PSR ¶ 260) and has  
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27 <sup>6</sup> See also *Rita v. United States*, – U.S. -- , 127 S.Ct. 2456, 2462  
 28 (2007).

1 extremely limited employment history, having been unemployed without a viable  
2 means of financial support since 2007.

3 Significantly, the Defendant has three children for whom it appears he  
4 provides little, if any, financial assistance.

5 This factor fully supports a stiff sentence.

6 3. Reflect the seriousness of the offense

7 It goes without saying that possessing numerous firearms, as well as  
8 significant amount of drugs, and engaging in counterfeiting activity are extremely  
9 serious offenses. This factor weighs in favor of a sentence that includes not only  
10 incarceration, but a lengthy term of oversight.

11 4. Promote respect for the law

12 The Defendant's criminal history speaks for itself. A lengthy sentence  
13 should plainly get the Defendant's attention. This factor also weighs in favor of a  
14 lengthy sentence.

15 5. Provide just punishment

16 The Defendant needs to be punished for all of his criminal conduct. A  
17 sentence can be fashioned to provide adequate punishment that would support the  
18 purpose and policy of the Federal Sentencing Act, 18 U.S.C. § 3553(a). Any such  
19 sentence can and should include the conditions and special conditions set forth in  
20 the Addendum to the PSR.

21 6. Afford adequate deterrence to criminal conduct

22 A sufficient term of oversight, such as a three-year term of supervised  
23 release, will subject the Defendant to judicial supervision after he is released from  
24 incarceration. Such oversight will plainly afford a deterrence to future criminal  
25 conduct.

26 7. Protect the public from further crimes of the Defendant

27 This factor weighs in favor of a lengthy term of incarceration. Given the  
28 Defendant's long criminal history, his involvement with firearms and drugs, and

1 his counterfeiting activities, the Defendant activities plainly demonstrate a clear  
2 risk to the public.

3 8. Provide educational training, medical care, or other  
4 correctional treatment

5 This factor weighs in favor of fashioning a sentence that includes the  
6 conditions and special conditions set forth in the Addendum to the PSR.

7 **Conclusion**

8 Based on the foregoing, the United States respectfully submits that this  
9 Court should impose, at a minimum, a 120-month term of incarceration, to be  
10 followed by a three-year term of supervised release. Any such sentence would be  
11 “reasonable” under the facts and circumstances of these cases and would not be  
12 greater than necessary to promote the purpose and policy of the Federal  
13 Sentencing Act, 18 U.S.C. § 3553(a).

14 DATED September 14, 2009.

15 James A. McDevitt  
16 United States Attorney

17 *s/Joseph H. Harrington*

18 Joseph H. Harrington  
19 Assistant United States Attorney  
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1 I hereby certify that on September 14, 2009, I electronically filed the  
2 foregoing with the Clerk of the Court using the CM/ECF System which will send  
3 notification of such filing to the following, and/or I hereby certify that I have  
4 mailed by United States Postal Service the document to the following non-  
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